Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

In The
SUPREME COURT Of The UNITED STATES

DANIEL L. BELL,

Petitioner,

v.

GEORGIA BUILDING AUTHORITY,

Respondent.

On PETITION For A WRIT Of CERTIORARI To The UNITED STATES COURT Of APPEALS For The ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DANIEL L. BELL (Pro se)
2205 Highview Rd. Sw.
Atlanta, Georgia 30311
(404)-755-6474

Question for review is the USCA December 28, 2005, denial of Appellant's November 7, 2005, Motion for Reconsideration of the USCA October 19, 2005, order dismissing his appeal for lack of jurisdiction.

All parties to this proceeding are contained in the caption of the case.

A corporate disclosure statement is not applicable in this action.

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Citations of the official and unofficial reports of the opinions and orders entered in the case are:

(From USDC September 28, 2005, Civil Docket for Case No. 1:03-CV-02384-WBH)

(1) R2-46: Report and Recommendation by USDC Magistrate Judge Joel M. Feldman on July 8, 2005.

(2) R2-49: Order by USDC granting Defendant's Motion for Summary Judgment on August 8, 2005.

(3) Order by USCA dismissing appeal for lack of jurisdiction on October 19, 2005. (Not on Docket Report).

(4) Order by USDC granting Defendant's Supplemental Motion for Summary Judgment on October 21, 2005. (Not on Docket Report).

(5) Order by USCA denying Motion for Reconsideration on December 28, 2005. (Not on Docket Report).

(Statement of the Basis for Jurisdiction):

The date of judgment or order sought to be reviewed was entered December 28, 2005.

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is Supreme Court Rule 10 (a) and (c).

The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriation citation:

(Title VII of the Civil Rights Acts of 1964, as amended, 42 U.S.C.A. sections 2000e-2).

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion,

sex, or national origin.

A concise statement of the case setting out the facts material to consideration of the questions presented:

Daniel Bell filed his complaint on August 7, 2003 in the United States District Court for the Northern District of Georgia, Atlanta Division. Except for a final claim, all other claims in the action were disposed of by an August 8, 2005, Order of the Court, which granted Defendant, Georgia Building Authority's Motion for Summary Judgment. The Court also further provided the Defendant with leave to file a motion for summary judgment out-of-time on a remaining claim. Bell was not intending to contend the final claim because he did not have evidence to support it.

Bell filed an appeal on September 6, 2005, to the United States Court of Appeals for the Eleventh Circuit, and the case was docketed on September 9, 2005. He, subsequently, advised the District Court that he was not

contending the final claim, and then the Court granted the Defendant's motion for summary judgment out-of time, and dismissed the action on October 21, 2005.

Bell filed an Appellant's Brief in the Court of Appeals on the due date of October 19, 2005, and that same day the USCA dismissed his appeal for lack of jurisdiction. It stated that "the district court's August 8, 2005, order is not final and appealable because all of the appellant's claims have not been disposed in this action."

Bell filed a Motion for Reconsideration on November 7, 2005, advising the USCA that he was not contending the final claim in the action, and that he had advised the USDC of this. The USCA denied his motion on December 28, 2005, not giving a reason for denial, even though Bell had met the requirements of 11th Cir.R. 40-4 respecting motion for reconsideration. It appeared at this time that the case was appealable, having been closed over two months earlier.

A review of a judgment of a United States court of appeals is sought, and the basis for federal jurisdiction in the court of first instance is brought under Title VII of the Civil Rights Act of 1964, as amended.

Reasons for granting writ/A direct and concise argument amplifying the reasons relied on for allowance of the writ is:

Daniel Bell filed an appeal to the USCA on September 6, 2005, after he received the USDC's August 8, 2005, Order granting Motion for Summary Judgment by the Georgia Building Authority, adopting in part and rejecting in part the Final Report and Recommendation. [See Doc. 49 at 8]. The part the USDC rejected was, in the Court's opinion, a final claim of Bell, and it provided the GBA with leave to file a motion for summary judgment out-of-time on the remaining claim within 30 days. Bell had no intention to pursue this particular "final claim", having put forth no evidence to support the claim.

Bell's intent was to timely file his appeal from the August 8, 2005, Order. On October 19, 2005, USCA dismissed Bell's appeal for lack of jurisdiction, stating that the August 8, 2005, Order was not final and appealable

because all of the appellant's claims had not been disposed of in this action. Furthermore, the judge did not certify the order for immediate review, the Court stated. Bell advised the USDC that he was not pursuing any other claim, and the USDC closed the case on October 21, 2005.

In Bell's October 19, 2005, Brief to the USCA, he advised the Court that he was not pursuing the final claim. [See Brief of Daniel L. Bell at 2]. On November 7, 2005, Bell filed a Motion for Reconsideration of the USCA October 19, 2005, Order dismissing his appeal for lack of jurisdiction. On December 28, 2005, the USCA denied Bell's Motion for Reconsideration, when all appellant's claims had been disposed of in the USDC on October 21, 2005, and the judge would have certified the order for immediate review.

APPENDIX

The opinions, orders, finding of fact, conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed:

USCA stated in its order dismissing Bell's appeal that the district court's August 8, 2005 order, which granted in part the GBA's Motion for Summary Judgment, was not final and appealable because all of Appellant's claims had not been disposed of in the action. **See 28 U.S.C. section 1291; Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984).** Furthermore, the USCA stated that the district judge did not certify the order for immediate review pursuant to Fed.R.Civ.P. 54(b). **See In re Yarn Processing Patent Validity Litigation, 680 F.2d 1338, 1340 (11th Cir. 1982).**

The Orders:

The lower court caption: The United States Court of Appeals for the Eleventh Circuit is the issuing court. Daniel L. Bell v.

Georgia Building Authority, No. 05-15004-BB is the title and number of the case. October 19, 2005, and December 28, 2005 are the dates of entry of the orders.

(1) This United States Court of Appeals' order in the case was filed on October 19, 2005. The Order is as follows:

This appeal is Dismissed, sua sponte, for lack of jurisdiction. The District Court's August 8, 2005, Order is not final and appealable because all of the appellant's claims have not been disposed of in this action. See 28 U.S.C. section 1291; Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). Furthermore, the judge did not certify the Order for immediate review pursuant to Fed.R.Civ.P. 54(b). See In re Yarn Processing Patent Validity Litigation, 680 F.2d 1338, 1338, 1340 (11th Cir. 1982).

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir.R. 40-4 and all other applicable rules.

(2) This United States Court of Appeals' order in the case was filed on December 28, 2005. The Order is as follows:

The appellant's November 7, 2005, motion for reconsideration of our October 19, 2005, Order Dismissing this appeal for lack of jurisdiction, is Denied.

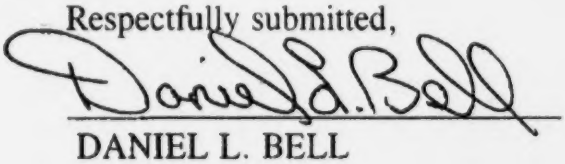
The petitioner acknowledges at this time that out of the five orders entered in this case (three by the U.S. District Court), the above two orders by the U.S. Court of Appeals are the **relevant** orders entered in conjunction with the judgment sought to be reviewed, and are necessary to ascertain the grounds of the judgment.

APPENDIX

The judgment sought to be reviewed is the same as the above USCA's December 28, 2005 order which denied appellant's November 7, 2005 Motion for Reconsideration of the USCA's Order dismissing his September 6, 2005 appeal for lack of jurisdiction.

This 20th day of July, 2006.

Respectfully submitted,



DANIEL L. BELL
Pro se

PLEASE SERVE:

Daniel L. Bell
2205 Highview Rd. Sw.
Atlanta, Georgia 30311
(Phone) 404-755-6474